

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.)
ANTYON BROWN #B77016,)
Petitioner,)
v.) No. 07 C 4899
J. MARK JONES, Acting Warden,)
Respondent.)

MEMORANDUM ORDER

Antyon Brown ("Brown") has tendered a self-prepared 28 U.S.C. §2254 ("Section 2254") Petition for Writ of Habeas Corpus ("Petition"), in which he seeks to challenge his January 2000 conviction on charges of first degree murder and first degree attempt murder, pursuant to which he is serving consecutive sentences aggregating 60 years. But Brown acknowledges that following his unsuccessful direct appeal (Petition Pt. I) he has instituted two state post-conviction proceedings, one of which has been exhausted in the state court system (Petition Pt. II ¶1.I) while the other has not (Petition Pt. II ¶4).

Under such circumstances involving a so-called "mixed petition," our Court of Appeals teaches that the appropriate course is not to dismiss the petition (which could result in the petitioner's loss of the now-exhausted claims), but rather to stay the petition while the unexhausted state claims are being pursued (see, e.g., Post v. Gilmore, 111 F.3d 556, 557-58 (7th Cir. 1997) (per curiam) and Freeman v. Page, 208 F.3d 572, 577

(7th Cir. 2000)). Accordingly this Court does just that: This action is ordered stayed, so far as Brown is concerned, while he continues with his state post-conviction proceeding.

At the same time, because of the possibility that an examination of the exhausted claims on the merits may demonstrate a lack of merit, this Court orders the Illinois Attorney General to file an appropriate answer as to the exhausted claims that conforms to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts. That answer shall be filed on or before October 22, 2007, after which this Court will determine what further proceedings may be appropriate notwithstanding the stay of this action generally.



Milton I. Shadur
Senior United States District Judge

Date: September 5, 2007